

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WAYNE ALLEN BORST,

Petitioner,

V.

PATRICK GLEBE,

Respondent.

CASE NO. C13-5001 BHS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 20), and

Plaintiff Wayne Allen Borst's ("Borst") objections to the R&R (Dkt. 21).

On April 22, 2013, Judge Strombom issued the R&R recommending that the Court

find that Borst's petition for writ of habeas corpus is time-barred and that it is not subject

to equitable tolling for any reason, including Borst's claim of actual innocence. Dkt. 20

Borst objects on numerous grounds, including that his petition qualifies for equitable

telling and that his petition is not time barred. Dkt. 31.

First, Borst has failed to show that he qualifies for equitable tolling. He fails to

submit any facts in support of circumstances beyond his control that prevented him from

1 timely filing the proper documents with the appropriate courts. Therefore, this objection
2 is without merit.

3 Second, Borst argues that the state court's decision became final on October 30,
4 2012. Borst, however, has attached the certificate of finality from the state court for the
5 collateral attack proceeding in which the state court determined that Borst's collateral
6 attack was time-barred. Dkt. 21, Exh. A. That certification of finality does not reset the
7 one-year period of limitation for filing his federal petition for a writ of habeas corpus.

8 Therefore, this objection is without merit.

9 The Court having considered the R&R, Borst's objections, and the remaining
10 record, does hereby find and order as follows:

- 11 (1) The R&R is **ADOPTED**;
- 12 (2) Borst's petition for writ of habeas corpus is **DIMISSED** as time-barred;
- 13 (3) A Certificate of Appealability is **DENIED**; and
- 14 (4) The Clerk shall **STRIKE** all other pending motions and close this case.

15 Dated this 31st day of May, 2013.

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BENJAMIN H. SETTLE
19 United States District Judge
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